

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Newberry Specialty Bakers, Inc.

Plaintiff

v.

Specialty Bakers, LLC

Defendant

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Cause No. _____

Jury Trial Demanded

ORIGINAL COMPLAINT & JURY DEMAND

Pursuant to FED. R. CIV. P. 3, 7(a), and 8, plaintiff Newberry Specialty Bakers, Inc. complains of defendant Specialty Bakers, LLC and would respectfully show unto the Court as follows:

1. Plaintiff Newberry Specialty Bakers, Inc. is a Texas corporation with its principal place of business in Harris County.

2. Defendant Specialty Bakers, LLC is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 450 South State Road, Marysville, PA 17053. Although it does business in Texas, it does not maintain a registered agent for service of process. Therefore, service may be made upon the Texas Secretary of

State pursuant to Tex. Civ. Prac. & Rem. Code § 17.044 by serving duplicate copies of process on the Texas Secretary of State, at the address of 1019 Brazos, Austin TX 78701, who in turn as required by Texas law, shall serve a copy of the process by certified mail, return receipt requested on Specialty Bakers, LLC by and through its registered Delaware agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801.

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338 as this suit concerns allegations of trademark infringement.

4. Defendant Specialty Bakers, LLC is subject to general and specific personal jurisdiction pursuant to the long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.42, and due process, as it does business in Texas. Specialty Bakers, LLC has minimum contacts with Texas, and purposefully availed itself of Texas law, and purposefully directed activity to Texas, and has sought the benefit of doing business in Texas, by, *inter alia*, contracting with Texas residents; intentionally distributing its products in Texas; and advertising and establishing channels of regular communication to Texas distributors and customers. These business dealings rise to the level of

substantial activities. Requiring Specialty Bakers, LLC to resolve this dispute in Texas comports with fundamental fairness and due process.

5. Venue is proper in the Southern District of Texas, Houston Division pursuant to 28 U.S.C. § 1391(b)(2) in that this is a district in which a substantial part of the acts or omissions giving rise to the claim occurred, and a substantial part of the property that is the subject of the action is situated, specifically the allegedly infringing materials.

6. Plaintiff recently changed its name from Coastal Foods, Inc. to Newberry Specialty Bakers, Inc. After doing so, it received a cease-and-desist letter from defendant Specialty Bakers, LLC alleging trademark infringement. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 et seq. that it is not infringing on defendant's trademark.

7. There is no trademark infringement as to design marks. Plaintiff's logo is a white circle with tan border. 'Newberry' crosses the top in a large tan font with the words 'Specialty Bakers' in white lettering on a dark red banner above an outline of three chefs, one holding a mixing bowl and the other two holding cooking utensils. Defendant's logo is an oval with a dark border with the word 'Specialty' in a red, cursive font above 'Bakers' in all caps, which in turn is above 'Since 1901,' also in all caps.

There is no likelihood of confusion, or mistake, or intent to deceive, vis-a-vis the overall impression of Plaintiff's and Defendant's design mark.

8. There is no trademark infringement as to Defendant's word mark as 'specialty' and 'baker' are generic. Alternatively, if 'specialty' is descriptive, Defendant bears the burden of proving secondary meaning.

9. Plaintiff also pleads fair use to the use of 'specialty bakers' in its work mark and design mark.

10. Plaintiff Newberry Specialty Bakers, Inc. respectfully demands that all issues of fact be tried by jury.

Therefore, Plaintiff Newberry Specialty Bakers, Inc. respectfully demands that the Court render a declaration pursuant to 28 U.S.C. § 2201 et seq. that it is not infringing upon any trademark belonging to defendant Specialty Bakers, LLC.

Respectfully submitted,

/s/ Kevin Pennell

Kevin Pennell
Texas Bar No. 24046607
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**ATTORNEY-IN-CHARGE FOR
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